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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,442	02/10/2004	Richard L. Denike	48941-A	1694

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EXAMINER

GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,442

Applicant(s)

DENIKE ET AL.

Examiner

Stephen Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant is advised that should claim 28 be found allowable, claim 33 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
2. It is requested that applicant cancel duplicate claim 33 in response to this action to facilitate the issue process if the application is ultimately allowed.
3. Claims 14-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14, line 3 is somewhat confusing, and —compartment—could be inserted after “each” of line 3 to clarify the claim in this regard as best understood.

Claim 20, “said bottom” lacks clear antecedent basis.

Claim 21, “said at least one compartment” lacks clear antecedent basis.

Claim 22, “said base” lacks clear antecedent basis and should apparently be —said base portion--.

Claim 23, “said grasping portion” lacks antecedent basis.

Claim 25, “the rotation of said means” lacks clear antecedent basis.

Claim 27, line 4 is somewhat confusing, and —compartment—could be inserted after “each” of line 4 to clarify the claim in this regard as best understood.

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Claim 29, line 3 is somewhat confusing, and ~~the~~ could be inserted after "when" of the line to clarify the claim as best understood.

Claim 30, "said at least one compartment" lacks clear antecedent basis.

Claim 31, the term "said rack" lacks clear antecedent basis as a rack per se is previously recited at multiple places including the base claim. Line 2 is additionally somewhat confusing, and "a receiving" and "a rack" in the line could be replaced with ~~said receiving~~ and ~~said rack~~ respectively to correct the claim in this regard as best understood. If these changes are adopted for line 2, the antecedent basis issue noted above for this claim would additionally be corrected.

Claim 32, "the receiving element" (2 places) and "the rack" (2 places) lack clear antecedent basis for the reasons discussed above regarding claim 31. If the changes to claim 31- line 2 suggested above are adopted, claim 32 would be clear and require no additional amendment.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 14-22 and 25, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett '265.

Bennett teaches a frame (figure 1) including compartments (separated by elements 44+) for cylinders 21 which are inserted through top openings. Means 51, 55, 59+ engage the cylinders to secure them in the frame.

Regarding new claim 14, the engaging means could be used to facilitate lifting and are operable between an open position (position with element 51 raised and/or removed) and a closed position (figure 2) as broadly claimed.

Claims 15-16, the frame is constructed as broadly claimed.

Claim 17, the device comprises metal.

Claim 18, the wings of nut 59 define a rotatable grasping portion as broadly claimed.

Claim 19, note valves 24 – fig 2.

Claim 20, note base 31+.

Claim 21, elements 33,34,36+ define a cupping portion as broadly claimed and as best understood.

Claim 22, the recessed portion between posts 35 is between the compartments as broadly claimed.

Claim 25, the means 59+ is restricted as best understood.

6. Claims 23-24 and 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Claims 27-33 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

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8. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP


§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Gordon
Primary Examiner
Art Unit 3612

stg